

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 346 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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USHABEN V PADHIAR

Versus

STATE OF GUJARAT

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Appearance:

MRS KETTY A MEHTA for Petitioner

SERVED for Respondent No. 1

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CORAM : MR.JUSTICE R.BALIA.

Date of decision: 04/12/97

ORAL JUDGEMENT

Petitioner, who at the time of filing this petition, was Assistant Director at Vaccine Institute, Baroda, was holding additional charge of Joint Director which was a post upgraded from the cadre of Deputy Directors. While the petitioner was holding that

additional charge, respondent No. 3 - Regional Deputy Director, Health & Medical Services, New Mental Hospital, Kareli Baug, Vadodara was ordered to hold additional charge, relieving the petitioner from holding the additional charge. She has filed this petition alleging that respondent No. 3 was not eligible and qualified to hold the post of Joint Director under the then existing rules providing for promotion to the post of Deputy Director at Vaccine Institute. The respondent No. 1 and 2 in their reply have submitted that since post of Joint Director was an upgraded post and for which there was no provision in the rules, then in force, and Government was contemplating to frame new rules for providing for promotion to the post of Joint Director, it is in anticipation of new rules, on the basis of policy of the State Government as approved by it, that the respondent No. 3 has been directed to hold charge of the said post.

The only relief claimed in this petition is to quash order dated 10th January, 1991 passed by the Additional Director, Health, Medical Services and Medical Education for directing the respondent No. 2 to hold additional charge as Joint Director, relieving the petitioner from holding additional charge. Ultimately, on 12-6-1991, "Rule" was issued in the matter. The Court observed while making order in respect of prayer for interim relief that, "the petitioner continues to be in charge of the post of Joint Director, Vaccine Institute, Baroda. The respondents are directed to not to take the charge of the said post from the present petitioners, pending hearing and final disposal of the petition. The respondent No. 3 is further directed to open additional lock on the office of the Joint Director, Vaccine Institute, Baroda."

That order continues to be in force until now. In effect, the order dated 12-6-1991 has granted the petitioner full relief asked for. However, it is apparent that neither there was any impediment on filling the post of Joint Director through regular appointment nor prohibited or posting of any other person otherwise competent to hold the post as Joint Director on regular basis. In the context of the controversy of changing hands for holding charge, the order necessarily had effect on the question of permitting any person to hold additional charge as stop-gap arrangement. Since the passing of above order, impugned orders have lapsed, I deem it proper to dispose of this petition with observation that if regular appointments have not already been made, the respondents are free to make arrangement for regular appointment as per the rules or executive

instructions governing the appointment to the post of Joint Director. The holding of additional charge does not give petitioner a right to continue on permanent basis, without regular selection to the post.

Rule discharged. Ad-interim order vacated subject to the observations hereinabove. No order as to costs.

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Prakash\*